THE HONOURABLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION NO.25820 OF 2006

DATED: 20-12-2006

BETWEEN:

N. Chinnababu, S/o. Late Veera Raghavaiah,
And another

... Petitioners

And

A. Balraj, S/o. Late Mallaiah and six others

...Respondents

THE HONOURABLE SRI JUSTICE T.CH.SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION NO.25820 OF 2006

ORDER: (per TCSR,J)

The writ petitioners seek to assail the order dated 17-10-2006 passed by the learned Special Court in I.A.No.949 of 2006 in L.G.C.No.35 of 2004.

The writ petitioners are some of the respondents in L.G.C.35 of 2004. Respondents 1 and 2 herein filed L.G.C.No. 35 of 2004 before the Special Court against present writ petitioners with some others seeking their eviction from the land in dispute on the premise that they were the grabbers of the land. Cognizance was taken by the learned Special Court in that case as L.G.C.35 of 2004 and directed the process to be issued. Pursuant to the process, the writ petitioners appeared before the Special Court and

then filed an interlocutory application in I.A.No.949/2006 requesting the learned Special Court to reject the application in L.G.C.35 of 2004 on the premise that the confessional statement filed and annexed to the application did not contain the necessary ingredients that constitute the act of land grabbing. That application was heard and under the impugned order, the learned Special Court dismissed the same.

It is the contention of the learned counsel for the writ petitioners that there has been no whisper whatsoever in the entire confessional statement about the act of land grabbing which indeed gives the necessary jurisdiction to the special Court. Therefore, application merits dismissal or rejection at the threshold.

Learned counsel in support of his contention seeks to place reliance upon the judgment of the Apex Court in ***"Gouni Satya Reddy Vs. Government of A.P***[1]***.*** Per contra, learned counsel for the respondents seeks to contend that it is the substance, of the pleading but not the form that is the criterion. The necessary ingredients, which constitute the act of land grabbing although might not have been mentioned in so many specific words but the intention, can be discerned from the averments made *inter alia* in the application filed before the Special Court. Having regard to the competing claims, the learned Special Court was of the view under the impugned order that since the subject matter of the dispute having been claimed on either side stating that the necessary sale deeds were executed by the original owner thereof in favour of either of

the parties, it is for the special Court to decide after full fledged trial as to who was entitled to the property in question. Having been thus of the view, the learned Special Court proceeded to dismiss the application. The main grievance of the writ petitioners seem to be that the special Court has not given the necessary finding in the order while dismissing the application that the main application filed in L.G.C.No.35 of 2004 did contain the necessary ingredients and therefore, the application in I.A.No.949 of 2006 merit dismissal and it is purely a case of non application of the mind on the part of the special Court. We are afraid we cannot accede to the said contention of the learned counsel. In the concise statement *inter alia* it has been mentioned that the applicants therein purchased the land on 16-01-1998 on which date the necessary sale deed was executed and presented for registration before the District Registrar, R.R.District, but the registration was delayed and eventually it was registered as document No.10230 of 2002 dated 21-11-2002 and that inasmuch as the applicants shifted their residence to Hyderabad from Madapur temporarily, the land was not under their cultivation, but in the month of January 2004, they could learnt that the respondents therein were in possession of the schedule land and were making constructions in the above said land and when the applicants questioned the respondents as to what right or title they had to raise the construction, the respondents threatened them with dire consequences. From these averments made *inter alia* in the application, it has to be seen whether the necessary

ingredients that constitute the act of land grabbing are discernible or not. Although it has not been specifically mentioned *inter alia* in the application that the respondents grabbed the land and they are the land grabbers that can be discerned from the averments made *inter alia* in the application. If such an intention is expressed in substance, but not in the form required to be made, it is trite that it is the subsistence of the averments that is material but not the form. In artistic articulations or ill-drafting shall have to be given allowance and the pleading shall have to be construed by reading the entire statement made *inter alia* in the application and if the necessary ingredients in substance but not in form are discernable they shall have to be taken into consideration.

It is a case where the applicants before the special Court claimed to have purchased the land on 16-01-1998 and the sale deed was executed on that day and was presented before the District Registrar, but on account of some unforeseen circumstances the registration was not immediately effected but eventually effected on 21-11-2002. The respondents seem to have purchased the very same land by means of a registered sale deed in the year 2000. Having regard to this competing claims, the question germane for consideration as rightly been observed by the learned special Court is as to who gets a valid title, shall have to be tried and determined by the Court. With that view in the mind, the learned special Court dismissed the application holding that it is a matter to be adjudicated eventually. The judgment sought to be relied on by the

learned counsel rendered by the Apex Court in ***Satya Reddy's case*** (1 supra) is obvious, and unlike in the instant case both parties claimed to have purchased the property from two different power of attorney holders of the original owner of the land in dispute. The appellant Satya Reddy while purchasing the property got a paper notice issued inviting objections from the public and when no objections having been set forth from any corner, he purchased the land. In those circumstances, the apex Court was of the view that he had taken all precautions and in fact he did not know about the bogus nature of the General Power of Attorney purported to have been executed by the original owner in favour of the executant, who eventually executed the document in favour of Satya Reddy. The Apex Court in ***Konda Lakshmana Bapuji Vs. Govt. of A.P.*** [2] had to consider the definition of land grabbing and the necessary ingredients that constitute the act of land grabbing. In Para 70 of the judgment the Court held thus:

> "The requisite intention which is an important ingredient of the land grabber, though not stated specifically, can be inferred by necessary implication from the averments in the petition and the plaint and the deposition of witness like any other fact. If a person comes into occupation of any government land under the guise of a perpetual lease executed by an unauthorized person having no title to or interest in the land it cannot but be with a view to illegally taking possession of such land."

The said judgment has also been quoted by the Apex

Court in the latter judgment in Satya Reddy's case. Therefore, there can be no legitimate quarrel with the law enunciated thus by the apex Court. What has to be seen is whether after having perused the averments made *inter alia* in the application, the necessary intention, which constitute the Act of land grabbing, can be discerned or not shall be seen. If the title in favour of the writ petitioners were to be upheld they will succeed and if the title in favour of respondents 1 and 2 herein were to be upheld, the possession of the applicants shall have to be considered in proper perspective. We may hasten to add here that we are not expressing any view on the merits of the case. In that view of the matter, we see no error of jurisdiction or illegality that has been committed by the learned special Court in having passed the impugned order. The merits shall have to be adjudicated as rightly observed by the learned special Court.

The writ petition therefore merits no consideration and is dismissed at the threshold. But under the circumstances there shall be no order as to costs. The learned Special Court may proceed to adjudicate the matter on its own merits without being swayed in any manner by any of the observations, made *inter alia* in the order.

T.CH. SURYA RAO, J.

G. CHANDRAIAH, J.

Dated: 20..12..2006.
Rns.

[1] 2004(7) SCC 398

[2] 2002(3)SCC 275